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HB 2202, HD 1 GEOTHERMAL RESOURCES

Statement for
Senate Committee on
Energy
Public Hearing - March 12, 1986

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HB 2202, HD 1 would amend certain provisions in HRS 205-5.1 regarding hearings on applications for permits for the development of geothermal resources within geothermal resource subzones (GRS's) and in HRS 205-5.2 regarding the withdrawals of designations. This statement on this bill does not reflect an institutional position of the University of Hawaii.

HRS 205-5.1 at present requires not only a public hearing on any proposed permit for geothermal development, but, if there is an appropriate request, a contested case hearing as well.

In the case of a permit for geothermal development in the Conservation District, HRS 205-5.1(d) provides that the application must be made to the Board of Land and Natural Resources, and the subsection provides no specific guidance to the Board as to the conditions under which the permit may be granted except that the granting must be "pursuant to board regulations."

HB 2202, HD 1 would provide that the Board, if a contested case is requested, may arrange for mediation that, if successful, would make the contested case unnecessary. The provision would be beneficial to the extent that the costs and delays inherent in the contested-case procedure would be reduced. It would be appropriate to provide in HRS 205-5.1(d) that the "preponderance of the evidence" supplied to the Board should support the granting of a permit for geothermal development in the Conservation District, as is provided in HRS 205-5.1(e) in the case of a permit for geothermal development not in the Conservation District and in HRS 205-5.2 in the case of a proposal for withdrawal of a GRS.

In the case of an application for a permit for geothermal development in the Agricultural, Rural, or Urban district, it is a county agency to which application must be made for a geothermal development permit, and the "preponderance of the evidence" relates to criteria set forth in three numbered paragraphs of HRS 205.1(e). Paragraph (1) of the criteria requires a finding that the geothermal development proposed in an area would not have unreasonable adverse effects of certain types. Paragraph 2 requires a finding that the development proposed would not unreasonably burden public services in the area. Paragraph 3 requires a finding that there are reasonable means to mitigate the unreasonable adverse effects or burdens referred to in the first two paragraphs.

There is a problem with this present wording in that paragraph 3 represents an exception to paragraphs (1) and (2) and not an addition to them. We suggest that this problem could be avoided, for example, by:

- 1) adding the phrase "unless there are reasonable measures available to mitigate these unreasonable adverse effects" to the end of paragraph (1);
- 2) adding the phrase "unless there are reasonable measures available to mitigate these unreasonable adverse burdens" to the end of paragraph (2); and
- 3) deleting paragraph 3.

We also suggest that a provision for mediation would be as appropriate in the case of an application for a county permit as in the case of a permit from the Board of Land and Natural Resources.

The amendment to HRS 205-5.2 proposed in HB 2202, HD 1 is purely editorial.